IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 5TH JUNE 2007 / 15TH JYAISHTA 1929

CRP.No. 124 of 2007()

AGAINST THE ORDER DATED 09/11/2006 IN IA 4131/06 IN OS.322/2005 of MUNSIFF COURT,MUVATTUPUZHA

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REVN. PETITIONER: PETITIONER/PLAINTIFF

VISWAMBHARAN, S/O. NARAYANAN,
RESIDING AT KULATHUMPATTU, FROM ARAYANICKAL HOUSE, PANDAPPILLY KARA, ARAKUZHA VILLAGE.

BY ADV. SRI.R.RAJASEKHARAN PILLAI
SMT.SABINA JAYAN
SRI.M.S.NISHAD

RESPONDENTS: DEFENDANTS

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1. MATHAI, S/O. ULAHANNAN,
RESIDING AT VENGACHUVATTIL HOUSE,
PANDAPPILLY KARA, ARAKUZHA VILLAGE.

2. JOHNSON, S/O. MATHAI,
-DO- -DO-

R2 BY ADV. SRI.K.R.SADASIVAN NAIR
SRI.S.K.AJAY KUMAR
SMT.PRIYA. H.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON I.A. NO: 343 OF 2007 IN
C.R.P. NO: 124 OF 2007

DISMISSED:

5.6.2007 Sd/- M.N.KRISHNAN, JUDGE

jj /TRUE COPY/

P.A.TO JUDGE

M.N.KRISHNAN, J.

C.R.P.No.124 OF 2007 G

Dated this the 5th June, 2007.

O R D E R

Respondents absent.

2. This revision petition is filed seeking to quash the order passed in I.A.4131/06 in O.S. 322/05 The suit is one for a mandatory injunction and also for a permanent injunction to restrain the defendants after declaration of title of the plaintiff over the B schedule property. It is averred that the plaintiff was not in a position to carry out the necessary amendment in the plaint and place substantial materials on account of the ailment of the plaintiff. It was not on account of any deliberate act that steps were not taken. Therefore, in order to avoid difficulties the plaintiff prayed for permitting him to withdraw the suit with a permission to file a fresh suit. The trial court was not inclined to allow such a prayer to grant permission as prayed for but nevertheless granted permission for withdrawal of the suit. Taking into consideration the averments in the petition, there appears to be some force in the contention of the counsel for the revision petitioner. The court below was not right in permitting to withdraw the suit but refusing the liberty to

file a fresh suit. At least the court should have, in case of intention to refuse permission to grant liberty to file a fresh suit could have given an opportunity to the plaintiff to take steps to amend the plaint as he desires. Since the order is already passed permitting withdrawal of the suit without liberty, the rights of the plaintiff is totally taken away. The plaintiff never wanted to avoid the suit but wanted to have a comprehensive suit with specific pleadings and it is for that purpose he sought permission to withdraw the suit with liberty to file a fresh suit. Interest of justice requires that an opportunity should be given to him. Therefore, the order under challenge is modified and the plaintiff is permitted to withdraw the suit with liberty to file a fresh suit. C.R.P is disposed of accordingly.

M.N.KRISHNAN
Judge

jj